

**REGULAR MEETING**

Meeting called to order by Mayor Daniel Mahler with a salute to the flag at 8:08 P.M.

**READING:** Open Public Meeting Announcement

This is the Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends and Herald News on January 25, 2012 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk.

**ROLL CALL:** Mayor Daniel Mahler, Councilman Cortellessa, Members Kevin Platt, Mark Reuter, Michael Ryan, Eugene Verba and David Slater.

**PRESENT:** Attorney Steven Veltri and Engineer Michael Cristaldi.

**ABSENT:** Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo and Member John Shutte.

**MINUTES:** from the January 19, 2012 Meeting

**MOTION TO APPROVE:** made by Member Reuter, seconded by Councilman Cortellessa. Voting yes were Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter and Slater. Members Ryan and Verba abstained.

**COMMUNICATIONS REPORT:** None

**APPLICATION STATUS REPORT (Engineer's Report):** Wanaque Reserve -

They would like to add 4 handicap parking spaces at the Clubhouse and remove 6 regular spaces to accommodate this change. It is a very *de minimis* change in the site plan and, instead of having them come back to the Board for an amended site plan, I would like to ask the Board to pass a Resolution based upon my reviewing the matter as the Engineer. It is not a change in the number of spots; they just want to put more handicap spots in front of the clubhouse. They presently have 4 and would like a total of 8 handicap spots. If you prepare a Resolution, and when I get the information, I can pass it along and put it in the file as part of the project.

Attorney Veltri stated there seems to be no trigger for a variance, but would like the file to reflect exactly what is going on on-site. If the plan can be dated, reviewed and approved by Mike, and confirmed that there is no variance needed, the approved plan can be kept in the file.

**MOTION TO APPROVE:** made by Member Slater, seconded by Member Platt. Voting yes were Mayor Mahler, Members Platt, Reuter, Ryan, Verba and Slater. Councilman Cortellessa abstained.

**NEW BUSINESS APPLICATION: Il Positano Restaurant**

1069 Ringwood Avenue, Haskell, NJ

Owner of Property is Bald Eagle Urban Renewal, 179 Cahill Cross Road, West Milford, NJ

Owner of Business is Joe Cira, 185 Prospect Place, Rutherford, NJ

**Testimony of:**

Joe Cira, 185 Prospect Place, Rutherford, New Jersey

Sal Falciglia, 179 Cahill Cross Road, West Milford, New Jersey

New restaurant to be put in Haskell Towne Centre (replacing the Dollar Store).

Joe stated he owns Il Positano in the Meadtown Shopping Center in Kinnelon and we are going for the same concept; an Italian Bar & Grille.

Sal stated the Building Permit will be submitted tomorrow and the Electrical and Plumbing Permits the following week.

Liquor License Transfer process has already been started. They have been fingerprinted and Application has been completed so everything is in the works.

Hours will be from 11:00am until 11:00pm and we anticipate opening within two months.

We would prefer not to open without the liquor license.

**MOTION TO APPROVE:** made by Councilman Cortellessa, seconded by Member Platt. Voting yes were Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Ryan, Verba and Slater.

**NEW BUSINESS APPLICATION: Subway Store**

1116 Ringwood Avenue, Haskell, NJ

Owner of Property is Abeth Realty Co., P.O. Box 333, Tenafly, NJ

Owner of Business is Christopher Harris, 56 Edgewood Road, Ringwood, NJ

**Testimony of:**

Chris Harris, 56 Edgewood Road, Ringwood, New Jersey

Anthony from the Subway Development Company

Business will be opened in building next to Post Office in Haskell.

We are at least three months away from opening. We are going to use the parking in the back since there are only two spots in the front. We are going to have a dual entrance; one from the back and one from the front. There is a door in the back that shares a common hallway between this business and the nail salon. There will be a vestibule and a door into the Subway.

**MOTION TO APPROVE:** made by Member Reuter, seconded by Member Slater. Voting yes were Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Ryan, Verba and Slater.

**PUBLIC DISCUSSION: None**

**RESOLUTION: Application #PB2011-08 “Meyer-McCrum-Kennedy”, 4 & 6 Venezia Lane, Haskell, Block 309, Lots 30 & 31 requesting approval for a minor subdivision to re-configure the lot lines for the two existing lots and create three new lots, each containing a one dwelling unit.**

**MOTION TO APPROVE RESOLUTION: made by Member Reuter, seconded by Councilman Cortellessa. Voting yes were Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter and Slater. Member Ryan and Verba abstained.**

**VOUCHERS: submitted by Steven Veltri, Esq. for attendance at the January 19, 2012 meeting for \$300, on the Meyer-McCrum-Kennedy Application for \$450 and on the M&T Bank Application for \$1,612.50; and submitted by Richard Alaimo Engineering Associates for Attendance at Meetings For The Period Ending 12/31/2011 in the amount of \$190.**

**MOTION TO APPROVE VOUCHERS: made by Councilman Cortellessa, seconded by Member Reuter. Voting yes were Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Ryan, Verba and Slater.**

**Attorney Veltri wanted to discuss the M&T Bank Conversion of Development Application #PB2011-06**

**We have an ongoing application for M&T Bank, which is not on the agenda.**

**The Applicant has had interaction with the Borough Administrator and may be appearing before the Mayor & Council in the near future but, as of tonight, they have not been there yet. My concern is that we did hear testimony on this application and we did receive a letter from the Attorney asking us to continue the Application, while he was going to address the Council. However, his last letter was in December, which extended through the February meeting, which we did not have. It is now March and we did not get another extension letter or a continuing extension letter. I am concerned because the time frame for the Board to make a decision has elapsed and, I am afraid that if we don't consider taking action tonight, someone could come back in April to say the time frame expired, the Board didn't take action and, by virtue of that, we are going to consider our Application granted.**

**My recommendation to the Board would be that we take action tonight, without prejudice. If you wanted to approve the Application based upon the testimony you heard, you could do that. If you want to deny it for lack of prosecution because it is a re-development plan, where we pointed them and asked them to appear in front of the Mayor & Council for an extension or modification to that plan, and you want to deny it because we don't have that approval, you can do that.**

**Mayor Mahler stated that the Bank had discussions with the town and our Redevelopment Consultant, Mr. Beneke. The feeling was that it really has to go back to the Mayor &**

Council to amend the re-development area first before the matter could come back to the Board. Attorney Veltri agrees with this statement and stated this was his feeling as well. The Bank had met with a committee of myself, Gil, Joe and John with Attorney Veltri and the Borough Attorney and 2 Councilman and the Administrator and they brought a potential developer to this meeting and the developer gave us some ideas as to what they wanted to put there. They wanted non-age restricted and we talked about lowering the number of units to 86 or 88. Shortly thereafter, the Bank, unbeknownst to us, put the property up for auction, after they lead us to believe they had a developer. After confronting the Bank about this, they claimed it was protocol for the Bank and they have to put up every property for auction. The auction was held at the end of February and the developer, who we met with, was the winner of the auction. There were only two bidders. To put this all in prospective, when the owner of the property went bankrupt, he owed \$6 million plus to the former owners of the candle factory, and approximately \$6 million to M&T Bank. There was \$12 million of debt on this property. M&T Bank foreclosed, knocked out the second mortgagee, and I believe the bidding was \$1,550,000. The developer has been in contact with us and wants to meet with the Mayor and a committee to put forth his ideas and present it to the entire Council. I don't know if he is making his presentation in April or May. This matter has to go before the Mayor & Council if we are going to amend that zone and we need to see what his proposal is before any action is taken.

Attorney Veltri questioned Mayor Mahler that he knew the municipality was engaging Mr. Beneke and his firm on a possible amendment to the re-development area, but is that on hold? Mayor Mahler stated that Mr. Beneke has done a draft, but no one has acted on it yet. Attorney Veltri mentioned that we have not seen it as a Board. Mayor Mahler asked if it would be more prudent to table this matter? Attorney Veltri's concern is that the last letter we received from Mr. Rubin was in December for the February meeting, which we did not have. So now it is the next meeting, and I don't have an extension letter from the Applicant. If we don't act, without the extension letter, they can come back at a future date to say that our approval should be deemed granted because the Board did not take action.

Member Reuter questioned what the steps were in this matter and what he believes occurred. There was a committee, which I thought would not necessarily act without the whole Board at least understanding the process, and then maybe it has to go to the Council and then come back to us. I do know that we did not vote on or approved anything, because many of the Board Members were not comfortable voting yes that night. Attorney Veltri concurred. But how did it go from us to the Council? Attorney Veltri said it never did, and that is my point. We have, despite what the Agenda says, a pending application and so I expect that application to be listed on any agenda and we should have a corresponding letter to say please carry. The problem I see tonight is that the matter is not on the agenda; it has disappeared on paper. We only have Mr. Rubin's December 9, 2011 letter stating, "The above captioned application is presently scheduled for a continuation of public hearing on December 15, 2011. Due to the ongoing discussions with the Borough as to this matter, please adjourn the application to the February 2012 Planning Board meeting. Thank you for your courtesies." We did not have a meeting in February, which is why we didn't talk about it. This is the next meeting and they are not here and I don't see

a letter after December 9 so I have a concern. We have a statutory time frame deadline that has passed and passed before the November meeting. This application was filed in August 2011, so my concern is that I don't want to be surprised in April, May or June with an argument by an attorney that we sat on it and didn't do what was right. What I am recommending is the Board takes action, without prejudice, so if we do get a letter from Mr. Rubin saying he wants to extend this matter until he works this out with the municipality on the re-development, the Board is covered. This will also eliminate the Applicant from having to re-file and pay additional fees.

Councilman Cortellessa questioned that, if we have a letter requesting a continuation until February, and we don't have an official meeting, does it automatically go to a March continuation? Attorney Veltri stated that that would be his argument in front of a judge.

Mayor Mahler stated, theoretically, that if we happen to vote to deny it subject to the fact that if an extension letter comes in within the next 30 days, the extension letter will supersede the denial. Attorney Veltri said yes because, if you do deny it, you are going to deny it without prejudice with the specific condition that if we do get a letter of extension from the Applicant, that we will re-list the matter on the agenda and they will not have to pay any fees and all testimony heard will be considered when we make our decision. This is as fair as the Board can be. The Board Secretary can call Mr. Rubin in the morning and, if he wishes to speak to me, I will speak to him and explain it to him.

Attorney Veltri stated, if we are going to make a decision on it, I want to bring up some other issues that I want you to put on the record, if someone supports these ideas. Essentially, I think where we left off was we felt that it was a unique application because it involved a re-development plan, that a re-development plan is a zoning ordinance and must be treated as such, and that the property was originally industrial and now the intent is to develop it from a residential point of view, and if it was not a re-development plan, we wouldn't have an age-restricted issue. It would just be an industrial site. What I think we were trying to tell the Applicant was that this is not a Planning Board Application, it is something that you need to take up with the municipality on a re-development amendment to the ordinance. Right now, the property is an age-restricted residential site, according to a Re-development Ordinance. In order to change this, it has to go before the Mayor & Council. This would be a Planning Board issue if this was originally a residential property. We listened to the entire original application and we granted it subject to an age restriction. But this situation came from the Mayor & Council through an ordinance that had an age restriction in the ordinance and we just approved a site plan. Now they are saying they don't want to go along with the elements of the site plan; major difference because of the age restriction. This is my philosophy and where we ended the November meeting, without making a decision but the time frame is uncovered here. Also, under the statute, the Bank has the right to make this Application. Right now, how can the municipality really look hard at the re-development ordinance without knowing what the intent is for the property and, when they change developers, the intent can change.

**MOTION TO DENY, WITHOUT PREJUDICE, PENDING RECEIPT OF AN EXTENSION LETTER WITHIN 30 DAYS, AT WHICH TIME THE DENIAL WILL BE RESCINDED:** made by Member Reuter, seconded by Member Slater. Voting yes were

**Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Verba and Slater.  
Member Ryan abstained.**

**MOTION TO ADJOURN AT 8:50 P.M.: made by Member Slater, seconded by  
Councilman Cortellessa. Carried by a voice vote.**

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**Jennifer A. Fiorito  
Planning Board Secretary**